



# PUBLIC NOTICE

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## DOMESTIC SECTION 214 APPLICATION FILED FOR CONSENT TO TRANSFER CONTROL OF CAVALIER TELEPHONE CORP.

### STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 02-216

On May 29, 2002, Cavalier Telephone Corporation ("Cavalier") and M/C<sup>1</sup> (collectively, "Applicants"), pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (the "Act"), filed an application for approval to transfer control of Cavalier and, indirectly, its operating companies, Cavalier Telephone Mid-Atlantic, L.L.C. and Cavalier Telephone L.L.C. (collectively "Cavalier Subsidiaries") to M/C.<sup>2</sup> The acquisition of control will occur pursuant to an acquisition by M/C of a majority voting percentage of the shares of Cavalier.

Applicants assert that this application is subject to streamlined processing under section 63.03(b)(2)(i) of the Commission's rules because the proposed transaction would result in the transferee, M/C, having a market share in the interstate, interexchange services market of less than 10 percent and providing competitive telephone exchange services or local exchange access services in geographic areas served by a dominant local exchange carrier (LEC) that is not a party to the transaction, and neither Applicants (nor their affiliates) are dominant with respect to any service.<sup>3</sup> We note also that the proposed transferee, M/C, is not a telecommunications provider.<sup>4</sup>

<sup>1</sup> M/C includes M/C Venture Partners IV, L.P. ("M/C IV"), M/C Venture Investors L.L.C. ("M/C Investors") and M/C Venture Partners V, L.P. ("M/C V").

<sup>2</sup> On July 10, 2002, Cavalier filed a supplement requesting that its pending application be treated under the new requirements and procedures adopted in the Streamlining Order. See Letter from Catherine Wang, Counsel for Cavalier Telephone Corp., *et al.* to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-216 (filed July 10, 2002); *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, 17 FCC Rcd 5517 (2002) (*Streamlining Order*).

<sup>3</sup> 47 C.F.R. § 63.03(b)(2)(i).

Cavalier Telephone Corporation is a privately held corporation organized under the laws of the State of Delaware. Cavalier Telephone Corporation is the sole member and sole manager of Cavalier Telephone, L.L.C., a Virginia limited liability company. Cavalier Telephone, L.L.C. is the sole member of Cavalier Mid-Atlantic, L.L.C., a Delaware limited liability company. The Cavalier Subsidiaries provide domestic long distance and competitive local services on a non-dominant basis in Virginia, Maryland, Delaware, New Jersey, and Pennsylvania. No individual or company currently owns 50% or more of Cavalier's stock. M/C holds the largest minority share.

M/C is a business investment company and is not itself a telecommunications provider. M/C is focused on investing in early-stage communications and related information technology companies. The principals of M/C have over two decades of experience investing in early stage communications companies.

M/C currently holds 9,785,810.4 shares of stock in Cavalier representing 49.9% of Cavalier's outstanding voting stock.<sup>5</sup> M/C intends to increase its voting ownership in Cavalier through the conversion of certain Class C nonvoting common stock to voting stock. Upon the Class C conversion to voting stock, M/C will hold approximately 55.2% voting control of Cavalier.<sup>6</sup> The Cavalier Subsidiaries will continue to provide service to the public under the same terms and conditions. The only change in ownership will occur among shareholders owning shares at the holding company level.

Applicants assert that the indirect transfer of control and related transactions described above will serve the public interest in allowing new competitors to strengthen their financial positions and create opportunities for consumers to have a choice of providers. Applicants

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<sup>4</sup> See C.F.R. § 63.03(b)(1)(ii).

<sup>5</sup> M/C holds its interests in Cavalier through M/C IV, M/C Investors, and M/C V. M/C VP IV, L.L.C. is the General Partner of M/C IV and M/C VP V L.L.C. is the General Partner of M/C V. The following individuals ultimately control other general partners of M/C IV and M/C V: James F. Wade, Matthew J. Rubins, David D. Croll, and Peter H.O. Claudy.

<sup>6</sup> In addition to the three entities in which M/C holds its investment in Cavalier, Chestnut Venture Partners, L.P. ("CVP") and its general partner Chestnut Street Partners, Inc. (CSPI) hold an approximately 1.26% interest, in the aggregate, in Cavalier's voting stock. CVP and CSPI are 100% controlled by Mr. David Croll. Mr. Croll also is a limited partner in M/C Venture Partners IV, L.P. and M/C Venture Partners V, L.P. and a minority interest holder in M/C Venture Partners V, L.L.C. Mr. Croll does not participate in the management of these companies. Because Mr. Croll does not own a majority interest in or have management control over these M/C entities, Applicants believe that the 1.26% voting interests held by CVP and CSPI should not be attributed to M/C. If the Commission disagrees with Applicants' conclusions and attributes the CVP and CSPI 1.26% interest to M/C, Applicants respectfully request approval of the acquisition of more than 50% of the voting stock of Cavalier ( $49.933\% + 1.26\% = 51.93\%$ ) *nunc pro tunc* to the November 13, 2001 issuance of Class D shares at which M/C and the CVP and CSPI entities acquired their voting shares at the current levels.

further assert that Cavalier will retain the financial resources to continue providing a full range of high quality voice, data, Internet and other services and compete in the United States.

Applicants state that the transaction will not involve any assignment of certifications or any change in the entities that hold such certifications, nor will the proposed transaction alter the Cavalier Subsidiaries' underlying day-to-day management, service to customers, or rates charged for current services. Thus, applicants assert that the transaction will be virtually transparent to existing customers because the proposed change will involve only a change in the percentage of voting stock held in the operating carriers' holding company.

## **GENERAL INFORMATION**

The transfer of control application identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days and reply comments within 21 days** of this notice.<sup>7</sup> Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the domestic lines or authorization to operate on the 31<sup>st</sup> day after the date of this notice. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive

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<sup>7</sup> See 47 C.F.R. section 63.03(a).

hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

**In addition, one copy of each pleading must be sent to each of the following:**

- (1) the Commission's duplicating contractor, Qualex International, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: [qualexint@aol.com](mailto:qualexint@aol.com); facsimile: (202) 863-2898; phone: (202) 863-2893.
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: [twilson@fcc.gov](mailto:twilson@fcc.gov), and
- (3) Bill Dever, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: [wdever@fcc.gov](mailto:wdever@fcc.gov); and
- (4) Nandan Joshi, Office of General Counsel, 445 12<sup>th</sup> Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: [njoshi@fcc.gov](mailto:njoshi@fcc.gov).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

For further information, please contact Tracey Wilson, at (202) 418-1394 or Bill Dever, Competition Policy, Wireline Competition Bureau at (202) 418-1578.

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